

CHASE MANHATTAN MORTGAGE)
CORP., et al.,)
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Plaintiffs,)
)
v.) Civil Action No. 01-507 (KAJ)
)
ADVANTA CORP., et al.,)
)
Defendants.)

At the March 25, 2004 pretrial conference in this matter, I reserved decision on four issues that were the subject of *in limine* applications by the parties. I gave the parties leave to submit further written argument and authorities to me. Having reviewed the arguments submitted as part of the pretrial order (Docket Item [“D.I.”] 384), the arguments provided orally at the pretrial conference (see transcript of 3/5/04 conference, cited herein as “Tr. [page:line]”), and in the subsequent submissions of the parties, the following are my rulings on two of those issues. Time constraints require that I provide my reasons only for the first of the two. I will provide further explication on the second issue prior to trial and will render rulings on the remaining two issues at the same time.

Advanta seeks leave to submit a supplemental expert report. That application is DENIED. Advanta delivered the report to Chase approximately six months after the close of expert discovery, one month before trial is scheduled to begin, and after the filing of the proposed final pretrial order in this matter. As I stated at the time of the

pretrial conference (Tr. 20:6-17), Advanta's effort to add to the record at this juncture is clearly beyond the time limits set forth in the scheduling order in this case. Chase asserts persuasively that permitting Advanta to change the playing field now would be highly prejudicial. Advanta has claimed that it should have the opportunity to rely upon the untimely report because Chase had filed two reports out-of-time earlier in the case. I dealt with that argument in the March 4, 2004 Memorandum Opinion (D.I. ___ at 23-25) addressing the parties' summary judgment and *Daubert* motions. I noted that Advanta had not articulated any prejudice that it had suffered from the late submission of the reports because it had received them prior to deposing the experts and because it had the opportunity, although it chose not to, to seek additional time for further preparation before taking those depositions.

More to the point, if the evidence it now sought to bring into the trial were genuinely critical, Advanta could have and should have made a motion to supplement months ago, but it did not.¹ In determining that the late submission of additional expert testimony should not be permitted, I have considered the strictures of Rules 26 and 37 of the Federal Rules of Civil Procedure, as well as guidance from the Third Circuit. *E.g.*, *In re Paoli R.R. Yard PCB Litigation*, 35 F.3d 717, 791 (3d Cir. 1994). I have weighed the claimed prejudice and surprise to Chase, the inability to cure the prejudice at this very late date, the disruption inherent in allowing a party to change the mix of evidence

¹Advanta's suggestion that it could not have dealt with this matter sooner because I did not rule on their *Daubert* motion until March 4, 2004, is simply not credible. Advanta clearly had the opportunity months ago to obtain the supplemental report, serve it on its opponent, make the expert available for deposition, and apply to the court separately with a motion to allow the use of the supplemental report in this case. It chose to do none of those things, until the eve of trial.

at this point, and the evident failure to bring this matter on earlier, when it is clear that Advanta could have done so had it felt it necessary. For the reasons expressed here, Advanta will not be permitted to rely upon the supplemental report.

Advanta's Motion Under 12 CFR §§ 4.36, 4.37 to Exclude Documents

The Motion is DENIED.

Kent A. Jordan

UNITED STATES DISTRICT JUDGE

April 22, 2004
Wilmington, Delaware